

hunter communications law group

~~EX PARTE OR LATE FILED~~

March 11, 1999

Magalie Roman Salas, Secretary
Federal Communications Commission
445 - 12th Street, S.W.
TW-A325
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte Presentation in CC Docket No. 98-147

Dear Ms. Salas:

Today the undersigned, accompanied by David Gusky and Stephen D. Trotman, Executive Vice President and Director of Local Services, respectively, of the Telecommunications Resellers Association ("TRA"), met with Robert C. Atkinson, Deputy Chief of the Common Carrier Bureau, Carol Matthey, Chief of the Policy and Program Planning Division, Michael Pryor, Deputy Chief of the Policy and Program Planning Division, and Staci Pies of the Policy and Program Planning Division. Discussed at that meeting were issues of concern to the membership of TRA with respect to the resale of advanced telecommunications services. The positions articulated by TRA at the meeting are set forth in the materials attached hereto, which were distributed at the meeting by TRA.

Respectfully submitted,



Charles C. Hunter
General Counsel to the
Telecommunications Resellers Association

Enclosure

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Association**

1730 K Street, N.W.
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Resale of Advanced Telecommunications Services

Section 251(c)(4): "[E]ach incumbent local exchange carrier has the following duties:

. . . The duty to offer for resale at wholesale rates any *telecommunications service* that the carrier *provides at retail to subscribers who are not telecommunications carriers*; . . ."

Telecommunications Service:

"[A]dvanced services are telecommunications services . . ."

Advanced Services Order at ¶ 60.

Subscribers Who Are Not Telecommunications Carriers:

"We expect that advanced services will be offered predominantly to residential or business users or to Internet service providers. None of these purchasers are telecommunications carriers."

Advanced Services Order at ¶ 61.

The record confirms, and even incumbent LECs do not contest, that xDSL services are being provided overwhelming to residential and business users and ISPs.

Provides At Retail: Advanced services are currently being aggressively marketed by incumbent LECs to end-user residential and business customers (see attached).

ISPs have long been classified as end users within the Commission's access charge regime.

Use by ISPs of advanced services in providing Internet-based services does not transform an otherwise retail offering into a wholesale service. Just as the sale of computer chips to a manufacturer of computers is a retail transaction in which the computer manufacturer is the consumer of the computer chips, the sale of advanced services to an ISP likewise is a retail, rather than a wholesale, transaction.

Wholesale contemplates resale, not consumption; wholesale is "[a] sale in large quantity to one who intends to resell." *Black's Law Dictionary* (6th edition).

Conclusion:

"[I]ncumbent LECs have the obligation to offer for resale, pursuant to section 251(c)(4), all advanced services that they generally provide to subscribers who are not telecommunications carriers. . . . To the extent that advanced services are exchange access services, we believe that they are fundamentally different from the exchange access services that the Commission referenced in the *Local Competition Order* and concluded were not subject to section 251(c)(4)."

Advanced Services Order at ¶¶ 60 - 61.

Action:

Adopt the tentative conclusion that incumbent LECs have a statutory duty, pursuant to Section 251(c)(4), to offer advanced services for resale at wholesale rates irrespective of whether, or to what extent, specific xDSL-based services offered by incumbent LECs are telephone exchange service as opposed to exchange access.

Conclude that advanced services are "provided at retail" if marketed to residential or business users or to ISPs.

Benefit:

Accelerate wide-spread consumer usage of advanced services; resale carriers drive market demand by increasing consumer awareness and enhancing service availability.

Enhance competition by minimizing incumbent LEC "headstart" and affording new market entrants the ability to "offer[]" services that consumers perceive to be equal in quality to the offerings of incumbent LECs."

Local Competition Order at ¶ 16.



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Infospeed DSL: Monthly Rates	Speed of data downloaded from Internet or LAN	Speed of data uploaded from home or remote location
Infospeed DSL 640K \$39.95	640 Kbps	90 Kbps
Infospeed DSL 1.6M \$59.95	1.6 Mbps	90 Kbps
Infospeed DSL 7.1M \$109.95	7.1 Mbps	680Kbps

One Time Charges

One-time charges include the following:

Service Connection Charge:	\$99.00
DSL Modem:	\$325.00
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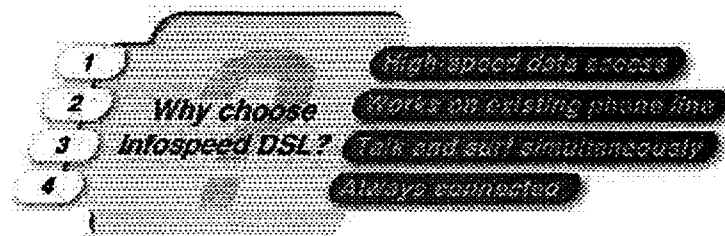
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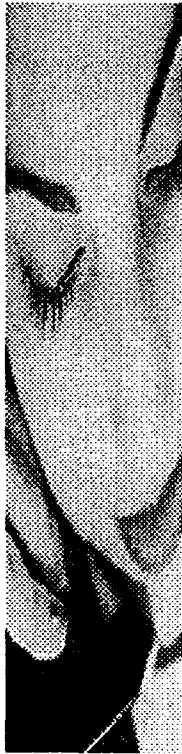
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DSL Modem:	\$325.00*
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**(DSL Modem is only \$275 after \$50 cashback from Westell, Inc. Offer ends June 30, 1999 and is limited to first 20,000 orders.)*

Please note that if you do not already have an Ethernet card, you will need to purchase one from Bell Atlantic or any other retail provider of Ethernet cards.

Internet Service Providers

ISP	Areas Served	Phone Number	Monthly Prices (in addition to Infospeed charges above)	Special Promotions
Bell Atlantic.net	DC Metro, North Jersey, Philadelphia, Pittsburgh	877-438-3750	640K: \$20 1.6M: \$50 7.1M: \$80	Sign up for twelve months and get a DSL modem for only \$49 after the cashback coupon. Plus, home turnkey installation is FREE. Bell Atlantic.net promotions in place through Dec. 31, 1999. (DSL modem will be \$99 after cash-back coupon expires on June 30, 1999.)
Atlantech	DC Metro	Atlantech: 301-589-3060 BA: 877-305-9390	640K: \$19 1.6M: \$45 7.1M: \$75 Business and Optional Services available	After the first three months at regular price, you get up to ONE YEAR FREE. After three months of Infospeed 640K you get twelve (12) months free; with Infospeed DSL 1.6M you get six (6) months free; and with Infospeed DSL 7.1M you get three (3) months free. Offer ends June 30, 1999.

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ISDN Rewards

Bell Atlantic will be "technology-change proofing" its high speed services by introducing an **ISDN Rewards** program concurrent with the launch of its Infospeed product line. Once Bell Atlantic Infospeed service is available in an area, Bell Atlantic residential customers who have purchased an ISDN modem from Bell Atlantic will be guaranteed an ADSL modem from the company at no additional charge when they subscribe to our Bell Atlantic.net DSL offering with a 12-month commitment.

Bell Atlantic residential customers who prefer to use another Internet provider will receive 1/2-off Bell Atlantic's normal ADSL modem price when they purchase an ADSL modem from Bell Atlantic. So, customers who want high-speed Internet access need not wait until ADSL-powered Infospeed is available in their area. Where Bell Atlantic Infospeed is not available or is not compatible with a person's line, customers can still order Bell Atlantic ISDN service for high-speed Internet access. Bell Atlantic ISDN service is available - today - to nearly 20 million households in the mid-Atlantic region and the Northeast. ISDN can provide Internet connections that are more than four times faster than traditional 28.8 Kbps modems. Nearly half of the one million ISDN lines installed in the United States are used by Bell Atlantic customers.

Purchase of Infospeed DSL not required. Limit one per household. ISDN modem must have been purchased from Bell Atlantic's Residential ISDN Center in Norfolk, VA or from Bell Atlantic's authorized sales agent IDRC or Telamon. Return of the ISDN digital modem invalidates this offer. Terms and Conditions associated with this program are subject to change.

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